Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Establishing the Digital Opportunity Data Collection	)	WC Docket No. 19-195
	)	
	)	
Modernizing the FCC Form 477 Data Program	)	WC Docket No. 11-10
	)	

COMMENTS OF NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE AND PUBLIC KNOWLEDGE

September 23, 2019

I. Introduction

New America's Open Technology Institute and Public Knowledge ("Commenters") hereby submits these comments in response to the Federal Communications Commission's ("the Commission") Second Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding.[1] Commenters support the Commission's efforts to improve its collection of broadband availability data, but the Commission must do more. First, the Commission should collect pricing data as part of Form 477 or any other broadband data collection regime. Second, the Commission should ensure that the ISP compliance process and the consumer challenge process are as straightforward as possible. Finally, the Commission should continue making the data publicly available in a machine-readable format.

II. The Commission Should Improve Broadband Availability Data Collection and Include Broadband Pricing

Commenters support the Commission's efforts to improve broadband availability data collection to provide better granularity and ensure that deployment data reflects where internet service providers (ISPs) have actually deployed service. Commenters also support the Commission's plan to incorporate crowdsourced data as part of the improved mapping effort, and to establish a challenge process to verify the data.

However, Commenters urge the Commission to include affordability in its analysis of broadband availability and to collect broadband pricing data as part of this proceeding. Studies consistently show that affordability is one of the biggest barriers to broadband adoption in the

[1] Report and Order and Second Further Notice of Proposed Rulemaking, WC Docket No. 19-195, WC Docket No. 11-10 (Rel. Aug. 6, 2019), https://docs.fcc.gov/public/attachments/FCC-19-79A1.pdf ("FNPRM").

United States. For example, only 42 percent of households making less than $20,000 annually had fixed wired home internet service as of the end of 2017, while 83 percent of households making more than $100,000 annually had the same service.[2] The Pew Research Center similarly found that 18 percent of U.S. adults who make less than $30,000 annually do *not* use the internet—whereas just 2 percent of adults who make more than $75,000 every year report that they do not use it.[3] Meanwhile, just 45 percent of U.S. adults who earn less than $30,000 annually have broadband service at their house, although 87 percent of adults who make more than $75,000 every year have service at home.[4] The North Carolina Broadband Infrastructure office found that 67 percent of households that did not have broadband access at home reported that cost was the primary reason they do not have it.[5] The National Telecommunications and Information Administration found that of the households making less than $25,000 every year that did not have broadband at home, 51 percent labeled cost as the most important reason for this lack of access, while 41 percent said it was due to a lack of interest.[6] These surveys show

---

[2] Written Testimony of Dana J. Floberg Before the Congress of the United States House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology, "Legislating to Connect America: Improving the Nation's Broadband Maps" (September 11, 2019) at 12, https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Floberg_Testimony.pdf.

[3] Monica Anderson et al., "10% of Americans don't use the internet. Who are they?," Pew Research Center (April 22, 2019), https://www.pewresearch.org/fact-tank/2019/04/22/some-americans-dont-use-the-internet-who-are-they/https://www.pewresearch.org/fact-tank/2019/04/22/some-americans-dont-use-the-internet-who-are-they/.

[4] "Internet/Broadband Fact Sheet," Pew Research Center (Feb. 5, 2018), https://www.pewinternet.org/fact-sheet/internet-broadband/.

[5] Mandy Mitchell, "State is stepping in to help bridge the digital Homework Gap," WRAL (May 15, 2019), https://www.wral.com/state-is-stepping-in-to-help-bridge-the-digital-homework-gap/18389163/.

[6] Rafi Goldberg, "Unplugged: NTIA Survey Finds Some Americans Still Avoid Home Internet Use," National Telecommunications and Information Administration Blog (April 15, 2019), https://www.ntia.gov/blog/2019/unplugged-ntia-survey-finds-some-americans-still-avoid-home-internet-use. While the report also shows that Americans report a lack of interest as the main reason for a lack of home broadband access, it is important to remember that interest and cost are often inextricably linked. *See* "The Complexity of 'Relevance' as a Barrier to Broadband Adoption," Benton Institute for Broadband & Society (Jan. 6, 2016), https://www.benton.org/blog/complexity-relevance-barrier-

that low-income Americans are less likely to subscribe to broadband services than those in higher wage brackets—reflecting the fact that affordability is a key factor in whether or not a household opts to purchase broadband access.

Further, providing broadband pricing data should not be overly burdensome for ISPs, due to the fact that they likely track what prices they charge for various services across the country. Even small ISPs should be able to report on pricing data. For example, Mike Oblizalo, Vice President and General Manager of a small ISP called Hood Canal Communications, has noted that the company's pricing and tier of service data is "collected on a monthly basis through our billing vendor and by advice of counsel we store the data for six years. The data can be exported from the billing software into a machine-readable format."[7] In response to a question over support for including an assessment of economic barriers to broadband access in the Commission's Broadband Deployment Report, Oblizalo argued that reviewing both availability and adoption would "seem to be an important part of making good policy."[8]

Carriers already have all of the pricing information and should be able to report it to the Commission as part of their obligations to report the services they provide. Tim Donovan, Senior Vice President at the Competitive Carriers Association, illustrated this point when—despite not supporting the disclosure of pricing information in Form 477 data collection—he argued that CCA's member carriers' "plans and pricing are publicly available, and carriers offer a variety of pre- and post-paid service plans to provide all consumers with options that meet their needs."[9]

---

broadband-adoption; "The Ability to Pay for Broadband," Benton Institute for Broadband & Society (June 11, 2019), https://www.benton.org/blog/ability-pay-broadband.

[7] Senator Blumenthal Questions for the Record, "Broadband Mapping: Challenges and Solutions," Senate Committee on Commerce, Science, and Transportation (April 24, 2019), https://www.blumenthal.senate.gov/imo/media/doc/Broadband%20Mapping%20QFR%20Responses%20-%20Senator%20Richard%20Blumenthal.pdf.

[8] *Id.*

[9] *Id.*

While Donovan argues that their disclosure of this information in other contexts means it is unnecessary to include in Form 477 data collection efforts, his acknowledgement that the data can readily be made available shows that ISPs should be able to report broadband pricing information to the Commission—particularly when taking the public interest benefits into account as well.

III. Compliance Should be Straightforward for ISPs and the Challenge Process Straightforward for Consumers

The Commission should ensure that compliance is straightforward for ISPs, so that the Digital Opportunity Data Collection will be comprehensive. The data collection rules should have clear, formulated instructions and timelines for ISPs, such that compliance does not impose an undue burden. Requiring real-time data collection would also enable greater accuracy of the data.

Commenters also support implementing a consumer challenge system as a necessary check on ISP-reported data—otherwise, there is no way to verify its accuracy. The challenge system should be easy-to-use and obvious, and consumers should feel empowered to challenge data they view as inaccurate without fear of retribution.[10] Such a system will help encourage challenges to inaccurate data, which will lead to better-informed policy decisions at the Commission. In addition, it will allow consumers to understand the broadband landscape and recognize the role that one's chosen place of residence can have in determining one's available broadband options.

[10] ISPs should not be allowed to know who complained about their data. Even if ISPs are able to make that determination, they should be precluded from taking retributive action against those people.

A clear and robust challenge process for verifying data is particularly critical. As Shirley Bloomfield, Chief Executive Officer of NTCA—The Rural Broadband Association, testified earlier this month, "Without the ability to challenge the self-reported data that will translate into the FCC's maps, much-needed support through the FCC's USF program could be being denied or withdrawn in areas where that support is in fact very much needed – which then translates into rural consumers not getting served, which is the most important part of this problem."[11] Without the ability to verify data, USF funds may be misallocated.

IV. The Commission Should Continue to Publish Deployment Data in Machine-Readable Format

The Commission should continue to make the broadband availability data it collects—whether through Form 477 or another method—available to the public in machine-readable format. This practice promotes transparency, accountability, and the public interest. Publishing this information also allows the public to study the deployment data and replicate the data for verification purposes.

Additionally, the publication of this data empowers researchers to compare availability data against other publicly-available datasets to develop greater understanding about the digital divide and broadband competition. For instance, the National Digital Inclusion Alliance used Form 477 data to determine that AT&T has "systematically discriminated against lower-income Cleveland, Ohio, neighborhoods in its deployment of home Internet and video technologies over

[11] *Legislating to Connect America: Improving the Nation's Broadband Maps*, Hearing before the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology (Sept. 11, 2019) (Testimony of Shirley Bloomfield), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Bloomfield_Testimony.pdf.

the past decade."[12] Specifically, the NDIA found that AT&T has "withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates" and has upgraded the broadband technology in higher-income areas of the city, while the majority of census blocks with individual poverty rates above 35 percent have been left with an "older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs."[13] The availability of Form 477 data for public research also provided the foundation for one of the most comprehensive reports about the racial digital divide—Free Press's *Digital Denied*—which found, "Among those with annual family incomes below $20,000, 58 percent of these low-income Whites have home-internet access, versus just 51 percent of Hispanics and 50 percent of Black people in the same income bracket."[14]

V. Conclusion

Commenters support the Commission's effort to improve broadband availability data and maps. The Commission should include broadband pricing data, ensure ISPs can comply with the new rules in a straightforward manner, ensure the challenge process is straightforward for consumers, and continue to make the data available publicly in a machine-readable format.

Respectfully submitted,

NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE AND PUBLIC KNOWLEDGE

[12] Jon Brodkin, "AT&T allegedly "discriminated" against poor people in broadband upgrades," Ars Technica (March 10, 2017), https://arstechnica.com/information-technology/2017/03/att-allegedly-discriminated-against-poor-people-in-broadband-upgrades/

[13] Bill Callahan, "AT&T's Digital Redlining Of Cleveland," National Digital Inclusion Alliance (March 10, 2017), https://www.digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/.

[14] S. Derek Turner, "Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption" Free Press (Dec. 2016), https://www.freepress.net/sites/default/files/legacy-policy/digital_denied_free_press_report_december_2016.pdf.

/s/ Amir Nasr
Becky Chao
New America's Open Technology Institute
740 15th Street, NW Suite 900
Washington, DC 20005